

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

Criminal Revision No.1413 of 2000

Date of Decision: 16 - 2 - 2010

Ajay Dahiya

.....Petitioner

v.

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr.P.K.Chugh, Advocate
for the petitioner.

Ms.Hemlata Balhara, AAG, Haryana.

KANWALJIT SINGH AHLUWALIA, J. (ORAL)

Ajay Dahiya was named as accused in case FIR No.141 dated 26.8.2001 registered at Police Station Kundli under Sections 354/342 IPC.

The Court of Additional Chief Judicial Magistrate, Sonapat released the petitioner on probation for one year as prescribed under Section 360 Cr.P.C and Section 4 of the Probation of Offenders Act. He was directed to furnish personal bonds in the sum of Rs.10,000/- with one surety in the like amount for one year. He was asked to appear and receive the sentence as and when called upon by the Court with a rider that during the period of probation, accused shall maintain peace and good behaviour.

Accused-petitioner had filed an appeal. The Appellate Court

found no merit in the appeal and dismissed the same.

A perusal of Section 11 of the Probation of Offenders Act, 1958 (hereinafter to be referred as, 'the Act') shows that an appeal shall lie against the order passed under Sections 3 or 4 of the Act passed by any Court trying the offender to the Court to which ordinarily appeals lie from the sentences of the former court. In exercise of powers of revision, such order of probation can be set aside and order of sentence can be passed against the offender according to law.

The FIR Ex.PW2/B was registered on the statement made by Seema Dahiya daughter of Attar Singh. The FIR was registered on the basis of written complaint submitted by Seema Dahiya. It was stated in the complaint that complainant was aged 17 years and was a student of 12th class. On 25.8.2001 at about 8.30 P.M., she was proceeding towards the house of her uncle Balbir (elder brother of the father) to give vegetable prepared in her house. There was no electricity in the village. The petitioner who was standing in front of the house caught hold of the complainant and dragged her inside the house in order to outrage her modesty. Complainant raised alarm. Vijay son of Kitab Singh, Pappu son of Sher Singh and Inder son of Kamal Singh were attracted at the spot and rescued the complainant from the hands of the accused. The cause of grudge stated was that there was some dispute regarding some money transaction between father of the complainant and the accused. In the supplementary statement, complainant had stated that accused caught hold of her hand and started moving his hand over the chest of the complainant.

Prosecution examined Narender as PW1 and Ram Kumar ASI, Police Post Bahalgarh, Investigating Officer as PW2 and complainant

Seema appeared as PW3. Prosecution also proved various documents.

Statement of the accused was recorded under Section 313 Cr.P.C. and all incriminating circumstances were put to him. A plea was raised by the accused that complaint filed by the complainant was a counter-blast to the litigation pending between the accused and father of the complainant and the FIR was lodged to pressurise the accused to withdraw the money suit. Accused had examined six witnesses. He himself appeared as DW6.

Narender PW1 had not supported the prosecution version and he was declared hostile. However, Seema PW3 testified against the petitioner. Two Courts below have placed implicit reliance on her testimony. The trial Court formulated a view that statement of PW1 Narender who was declared hostile can only be corroborative evidence to the extent that on 26.8.2001 at 7.00/8.00 P.M. some incident did take place in the street. The Appellate Court below had affirmed the finding of the trial Court. Petitioner was released on probation on 27.9.2002. The period of probation had come to an end. The trial Court released the petitioner on probation for good conduct for one year as provided under Section 360 Cr.P.C. and Section 4 of the Act. Probation of Offenders Act is a special Act. Therefore, Section 360 Cr.P.C. will not be applicable and probation granted to the petitioner is to be construed under Section 4 of the Act. The provisions of Section 12 of the Act state that any person who has been found guilty of an offence and has been dealt with under the provisions of Section 3 or Section 4 of the Act shall not suffer from any disqualification attached to a conviction of offence under such law. Therefore, needless to say that in view of provisions of Section 12 of the Act, conviction of the

petitioner shall not cause any disqualification.

Subject to aforesaid, the present revision petition is disposed of.

February 16, 2010.

**(KANWALJIT SINGH AHLUWALIA)
JUDGE**

RC